IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION NO.772 OF 2006
IN
COMPANY PETITION NO.620 OF 2005

Citibank N.A. Petitioner
versus
Konega International Pvt.Ltd. Respondent

Mr.C.S.Balsara i/by Rajani Associates for petitioner

Mr.Cyres Ardeshir for respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 14th September 2006

PC :

1. At the conclusion of hearing, I had pronounced my order dismissing the company application. Here are the brief reasons for the aforesaid order.

2. Company application is for recalling an order passed on 4th May 2006 admitting Company Petition No.620 of 2005. The applicant before me is the company-original respondent. It prays in the alternative that it be allowed to deposit

Rs.25.00 lakh in the Court within a period of 24 weeks and till that time further proceedings in the company petition be stayed.

3. Shri Balsara appearing for the applicant-original respondent in support of this application, after inviting my attention to the affidavit in support submits that the object of the petitioner is to put pressure on the respondent and extract monies without contesting the application before DRT.. The petitioner is aware that the applicant-respondent before this Court is not the principal borrower but a Guarantor. The recovery proceedings before the DRT are against both. It is not disputed that properties are mortgaged to secure repayment of the dues. In other words, there is security in favour of the petitioner. In such circumstances, company petition is not maintainable and even otherwise an abuse of the process of Court.

4. It is submitted that by an order dated 27th October 2005 the DRT has restrained the Principal Borrower, the Applicant, Mr.Mahesh Goenka and Mr.Manoj Goenka from disposing off and/or creating third party rights in their assets till the hearing and final disposal of the recovery

proceedings. Thus, the petitioners are protected. Shri Balsara submits that the applicant has employed 1,100 workers in its factory and administrative office. They will be deprived of their source of livelihood. The financial position of the company is pointed out and it is denied that the company is commercially insolvent. He submits that in such circumstances, the company petition should not be allowed to proceed. Shri Balsara has relied upon the following decisions in support of his contentions :-

i) 1992(2)-UJ 987 (SC) (Budhia Swain vs. Gopinath Deb);

(ii) 2001(3) ALL MR-737 (Viral Filaments Ltd. Vs. Indusind Bank Ltd.);

(iii) BLR-Vol.XXXL-436 (Hari Ganu Bhandirge Vs. Hari Ganu Shinde);

(iv) Company Petition No.323 of 2001 decided on 31st October 2002 of Delhi High Court.

5. On the other hand, Shri Ardeshir appearing for the original petitioner submits that this application is not maintainable. He submits that against the order passed by this Court the respondent preferred an appeal being Appeal (L) No.445 of 2006. By an order dated 6th June 2006

the Division Bench was pleased to permit the applicant herein to withdraw the appeal with liberty to approach this Court for clarification of the order of 29th March 2006. He points out that pursuant to the liberty granted, Company Application being Company Application (L) No.616 of 2006 was filed and it was withdrawn with liberty to adopt appropriate proceedings. In the mean while, on 28th June 2006, a decree has been passed by the DRT.. He submits that in the light of this so also the proceedings being misconceived, this application be dismissed.

6. He submits that this Court has considered all aspects inasmuch as the applicants had suppressed several facts before the Appellate Court. The appeal was filed and moved by another Advocate. At the admission of the Company Petition, the company was represented by Mr.P.G.Lad, Advocate. The company petition came up for admission in March 2006 and was adjourned at least on five to six occasions, on the ground of settlement. On 29th March 2006 this Court recorded the fact that settlement talks were held and an offer for settlement was made by respondent company. The offer was to pay Rs.2.5 crores in full and final settlement. This Court recorded the statement of

the applicant's counsel/advocate that the respondent would deposit in this Court a sum of Rs.50.00 lakh. It is in such circumstances that time was granted to the company to show its bona fides. Thereafter, the matter was heard for admission. This Court has considered all objections including to the maintainability of the company petition and by a reasoned order proceeded to admit this petition. Once again, an opportunity was given to settle the matter. Now entertaining such an application would be abuse of the process of the Court.

7. After hearing counsel for both sides, in my view, entertaining this application would amount to reopening matters which have been prima facie concluded at the stage of admission of the company petition. The remedy of the applicant of filing an appeal has also been availed of. Besides that, I find nothing in the application which would permit recalling of my order. My order dated 4th May 2006 admitting the company petition takes note of the proposal of settlement as also all contentions which have been canvassed before me while arguing this application. At that time the respondent- applicant was represented by another advocate. He had raised

all contentions including maintainability of the petition in the light of pending proceedings before DRT.. I had rejected that contention by observing that nothing has been pointed out in law which would make a company petition non maintainable merely because the original petitioner has approached the DRT for recovery of monies. That position is now well settled and a judgement of the Division Bench of this Court in Viral Filaments reported in 2001(3)-All Mah. Reporter-838 clearly overrules all objections in that behalf.

8. Therefore, I find much substance in the contentions of Shri Ardeshir that this application is an abuse of process of the Court. The same is not bona fide as well. Merely because another advocate is engaged, it would not be proper to permit rearguing the matter. That apart, the offer of settlement made and noted by this Court is also reflected in the correspondence between the petitioner and earlier advocate of respondent. Hence, the Company application deserves to be dismissed. It is accordingly dismissed. Ad-interim order, if any, to stand vacated forthwith. No costs.

9. These are the reasons which led to the final order of dismissal of this company application.

(S.C.DHARMADHIKARI, J.)